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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,866

10/18/2006

Paul Brian Kiser

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7590

03/04/2010

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,866	Applicant(s) KISER, PAUL BRIAN	
	Examiner Steven L. Weinstein	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 4-6 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/6/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicants response, filed 12/9/09, to the restriction requirement, mailed 11/18/09, has been received. Applicant elected Group I, with traverse. Applicant's traverse is on the grounds that the search for the seasoning mixtures for a food would inherently include methods of preparing a food and containers which may be used in the preparation of the food. This is an opinion, not supported by any evidence. In fact, whereas there may be some overlap in the two searches. The two groups of claims are directed to two different statutory classes of inventions and as such there would be significant areas of search that do not overlap.

The restriction requirement is therefore made FINAL.

Accordingly, claims 4-6 are withdrawn from further consideration as being drawn to a nonelected invention and an action on the merits of claims 1-3 follows.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Billmers et al (6,846,502).

In regard to claim 1, Billmers et al discloses a method of preparing a food, comprising cooking or heating the food and applying to the cooked food a seasoning mixture comprising seasonings and a granular edible substance that will form on the surface of the food, at the temperature of the cooked food, an essentially continuous coating, which coating is no longer fluid at the temperature in which the food is to be

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consumed. Thus, contrary to what has been disclosed in applicants specification, applicant is not the first to apply a seasoning mixture coating after cooking rather than before cooking, and claim 1 is anticipated by Billmers et al. In regard to claim 2, which recites that the granular edible substance comprises at least one of baker's sugar, anhydrous dextrose or hydrous dextrose, Billmers et al discloses glucose, and glucose is used synonymously with dextrose.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billmers in view of Block (2,739,896) and Williams et al (4,940,590).

Although Billmers et al is considered to anticipate claim 2 for the reasons given above, Block can be relied on to teach it was notoriously conventional to employ dextrose, in both anhydrous and hydrous forms, in a coating composition. Williams et al is further evidence of dextrose containing glaze coatings. Since Billmers et al discloses the use of sugars in coating compositions, including the use of glucose, to modify Billmers et al, if necessary, and substitute one conventional sugar for another conventional sugar would have been an obvious result effective variable, routinely and obviously determinable and an obvious matter of choice in view of the art taken as a whole.

The remainder of the references cited on the PTO892 forms are cited as art of interest. Note that the cited art is replete with examples of supplying particulate, additive containing, coating compositions to foods after the foods are cooked, but while they are still warm enough to melt the particulates to form a coating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

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